Attachment 1

Overview of the Safety and Soundness Regulation of Fannie Mae and Freddie Mac

OFHEO's Regulatory Regime

OFHEO's regulatory regime has three components: (1) Risk-based examinations, (2) Capital regulation, and (3) Research. These regulatory components ensure OFHEO has an ongoing and forward-looking perspective on the Enterprises' operations. OFHEO also has broad enforcement powers which allow it to compel compliance if safety and soundness, capital, or legal deficiencies are ever found. A brief description of these components follows.

Comprehensive Risk-based Examinations

The first part of OFHEO's oversight program is a robust examination program. In developing its examination program, OFHEO identified six core examination principles which are applied when evaluating the Enterprises' activities. These principles find that effective examination:

- Evaluates the existing financial condition and state of risk management, and attempts to anticipate the onset of potential issues or problems that have the capacity to adversely impact the financial health of an Enterprise;
- Requires each Enterprise's management to exercise a degree of oversight and control that is commensurate with the risks at the Enterprise;
- Focuses examination resources on those areas where weaknesses could impair the financial health of an Enterprise and where weaknesses are pervasive or result from intentional disregard;
- Incorporates the opportunity to share with each Enterprise the regulator's unique perspective on best practices and emerging issues, promoting operations and performance enhanced through sharing knowledge;
- Is goal- and results-oriented and does not rigidly prescribe the means by which an Enterprise achieves the desired goals or results; and
- Uses the regulator's resources efficiently and does not impose unwarranted costs on an Enterprise.

Next OFHEO developed a risk-based examination and oversight approach that is consistent with the core principles. This approach promotes the efficient use of OFHEO resources by focusing on areas of relatively higher risk in each Enterprise.

OFHEO begins by considering each Enterprise's risk profile, based on an assessment of the quantity of risk and the quality of risk management at each Enterprise. In developing risk profiles, OFHEO considers each Enterprise's corporate strategies, business initiatives, risk management practices, and on- and off-balance sheet portfolios.

To prepare for each annual examination cycle, OFHEO develops detailed, customized examination strategies that reflect each Enterprise's unique risk profile. The examination strategies are dynamic and are reviewed and updated quarterly based on the Enterprise, industry, and economic developments.

To carry out its exam program, OFHEO has grouped its 10 examination program areas into four categories of risk and aligns its examination force into four teams with expertise which correspond to the categories. The four teams -- credit, market, operations, and corporate governance -- evaluate criteria, assessment factors, and examination objectives in each of the following 10 program areas: Credit risk, interest rate risk, liquidity management, information technology, business process controls, internal controls, board governance, management processes, audit, and management information.

On an ongoing basis, OFHEO communicates its examination findings with the Enterprises and outlines the steps which are expected to address weaknesses. Also, at least annually OFHEO communicates its examination conclusions to each Enterprise's Board as well as publicly through OFHEO's Annual Report to Congress. As reported in OFHEO's 2000 Report to Congress, the 1999 annual risk-based examinations found both Enterprises to be financially sound and well managed.

Capital

The second component of OFHEO's oversight program is the regulation of each Enterprise's capital. The Enterprises' board of directors is responsible for ensuring that the company maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise. OFHEO's statutory obligation includes enforcing a statutory minimum capital standard similar to the standard imposed on banks as well as a sophisticated risk-based standard which will simulate how the Enterprises' financial portfolios will perform under extremely adverse economic conditions.

Since its inception, OFHEO has enforced compliance with the agency's minimum capital standard. Essentially, this standard requires each Enterprise to hold capital equal to: (1) 2.5% of their on-balance sheet assets, (2) .45% of balance of mortgage-backed securities outstanding, (3) .45% of half the commitments outstanding, plus (4) .45% of other off-balance sheet assets.

OFHEO will soon finalize its risk-based capital standard. When finalized, the Enterprises will have to meet both the minimum and risk-based capital requirements. Risk-based capital is much different from the risk-weighted leverage standard used to regulate banking institutions. That is because it uses a

stress test to simulate the financial performance of the Enterprises under severe economic conditions.

Computer models are employed to simulate the performance of mortgages and other assets and obligations under stressful economic conditions. The economic conditions used in the stress test were dictated by Congress in the 1992 Act that established OFHEO and include large sustained movements in interest rates and high levels of mortgage defaults and associated losses.

Modeling cash flows associated with Enterprise assets and obligations will provide us with an accurate picture of the risks they pose, as well as the benefits produced by hedging. The Enterprises must have sufficient capital to survive the losses under these difficult circumstances for 10 full years – that's every quarter of every year. Finally, in order to fulfill their risk-based obligation, the statute requires that the Enterprises add 30 percent more capital to cover management and operations risk.

OFHEO is committed to submitting its final risk-based capital rule to the Office of Management and Budget (OMB) by year's end for publication in the Federal Register. The results of the risk-based capital stress test will be used to determine each Enterprise's risk-based capital requirement and, along with the minimum capital requirement, to determine each Enterprise's capital classification.

Research

The third leg of OFHEO's regulatory regime is a comprehensive research capacity. As the Enterprises expand, the markets in which they operate change and their business systems – including their risk management systems –grow more complex. Thus, it is clear that objective and authoritative research is an increasingly crucial component in providing the Director and the Office – as well as other interested parties such as the Congress – with the information needed to properly regulate the Enterprises. To ensure its preparedness for the future challenges associated with overseeing the Enterprises, OFHEO is strengthening its already capable research operation.

The integration of knowledge gleaned from research into the other components of OFHEO's regulatory regime – specifically capital and examinations – intensifies the precision of these other components. One use for this research is updating the risk-based capital model. It is clear that as the Enterprises take on more risk and become more innovative in the associated risk management, OFHEO must understand the intricacies of these risks. Our research is critical to providing our modeling team with up-to-date information

and analysis of these changes so the regulation can adapt to the changes. Similarly, OFHEO's examiners will oversee increasingly complex systems and processes as the Enterprises continue to expand the use of technology, develop new products, and adapt to the constantly changing business environment. Timely research will provide these examiners with the information they need to understand these changes and determine the appropriateness of the systems to manage the associated risks.

Enforcement

To complement OFHEO's regulatory regime, Congress provided the Office with enforcement authorities to help prevent or remedy violations of law or regulation. As provided in its enabling statute, OFHEO has both explicit and implicit authority to undertake enforcement actions to "ensure that the enterprises are adequately capitalized and operating safely… " OFHEO's enforcement structures are similar though not identical to other federal financial institution regulators.

Key enforcement tools explicit in OFHEO's enabling statute include: entering into written agreements with an enterprise to address a particular practice; conduct of hearings and issuance of subpoenas; capital-related tools enforcement devices, such as restrictions on capital distributions and establishment of capital restoration plans for an undercapitalized or significantly undercapitalized enterprise; conservatorship for a critically undercapitalized enterprise; broad and general cease and desist authority (including, but not limited to, orders for restitution of funds for unjust enrichment to an executive officer or director, to restrict enterprise growth, to require disposal of an asset, to require rescission of a contract and so on); and civil money penalties for violations of law or regulation.

Attachment 2

Legislative Recommendations

While the 1992 Act which created OFHEO provided the Office with sufficient authority to fulfill its mission, there are issues covered by the act which should be modified to provide an optimal regulatory structure. These amendments would ensure that OFHEO always has the regulatory capacity and flexibility which is vital to the agency's long-term success.

Specifically, OFHEO recommends that Congress:

- Clarify OFHEO's regulatory enforcement and other authorities;
- Remove OFHEO from the annual appropriations process;
- Grant the Office independent litigation authority, similar to that enjoyed by all other Federal financial regulators;
- Provide OFHEO with express removal and prohibition authority, which allows the Office to bar "bad actors" from working at the Enterprises or anywhere else in the financial services industry; and
- Remove OFHEO from the coverage of the Federal Advisory Committee Act, similar to other Federal financial regulators.

SEC. 101. ENFORCEMENT AUTHORITY.

(a) Section 1364(b) of the Housing and Community Development Act of 1992 (12 U.S.C. 4614(b) is amended by deleting the term "core" in the first sentence thereof.

(b) Section 1369A(e) is amended to delete "(1) IN GENERAL.– " and paragraph (2).

(c) Section 1369B(c) is amended to delete ", with the approval of the Attorney General,";

(d) Section 1371(a) is amended–

(1) by striking the word "the" before the term "enterprise" the third and fourth places such term appears and inserting the term "such" in lieu thereof;

(2) by redesignating paragraphs (1) through (3) as paragraphs (3) through (5), respectively;

(3) by adding a new paragraph (1) to read as follows–

"(1) an unsafe or unsound practice in conducting the business of the enterprise;";

(4) by adding a new paragraph (2) to read as follows–

"(2) any conduct that violates any condition imposed in writing by the Office in connection with the granting of any request by the enterprise;";

(5) by amending renumbered paragraph (3) to strike the term

“core”;

(6) by amending renumbered paragraph (5)(A), to strike “or” preceding “any order”; to insert “or any other applicable law,” after “title or Act”.

(e) Section 1371(b) is amended by deleting the term “core” in paragraph (1).

(f) Section 1371(d) of the Housing and Community Development Act of 1992 (12 U.S.C. 4631(d)) is amended by inserting at the end of paragraph (d)(7):

“Such authority includes the same authority to issue an order requiring a party to take affirmative action to correct conditions resulting from violations or practices or to limit activities of an enterprise or any executive officer or director of an enterprise as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act.”.

(g) Section 1372(a) is amended by deleting the term “core” in paragraph 2 thereof.

(h) Section 1372(e) is amended to delete in the caption “BY ATTORNEY GENERAL” and to delete “request the Attorney General of the United States to” and “, or may, under the direction and control of the Attorney General, bring such an action”.

(i) Section 1375 of the Housing and Community Development Act of 1992 is amended–

(1) in paragraph (a) by deleting "request the Attorney General of the United States to" and ", or may, under the direction and control of the Attorney General, bring such an action"; and

(2) in paragraph (b), strike "1372, or 1376," and insert "1372, 1376, or 1379C,".

(j) Section 1376(a)(2) of the Housing and Community Development Act of 1992 is amended to strike "or 1372" and insert "1372, or 1379C" in lieu thereof.

(k) Section 1376(d) of the Housing and Community Development Act of 1992 is amended to delete "request the Attorney General of the United States to" and ", or may, under the direction and control of the Attorney General, bring such an action"

(l) Section 1379(a)(2) of the Housing and Community Development Act of 1992 (12 U.S.C. 4539(a)(2)) is amended–

(1) by deleting the "and" between "1373" and "1374" and inserting ","; and

(2) by inserting "and 1379C" immediately before the semicolon at the end of the paragraph.

(m) Section 1379B of the Housing and Community Development Act of 1992 is amended to delete "may request the Attorney General to bring" and ",

under the direction and control of the Attorney General,".

(n) Amend the Housing and Community Development Act of 1992 to add a new section 1379C to read as follows:

"SEC. 1379C. SUSPENSION AND REMOVAL.

"(a) REMOVAL AND PROHIBITION AUTHORITY.—

"(1) AUTHORITY TO ISSUE ORDER.— Whenever the Director determines that—

"(A) any institution-affiliated party has, directly or indirectly—

"(i) violated—

"(I) any law or regulation;

"(II) any cease-and-desist order which has become final;

"(III) any condition imposed in writing by the Office in connection with the grant of any application or other request by such enterprise; or

"(IV) any written agreement between such enterprise and the Office;

"(ii) engaged or participated in any unsafe or unsound practice in connection with any enterprise or business institution; or

"(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary

duty;

"(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)–

"(i) such enterprise or business institution has suffered or will probably suffer financial loss or other damage;

"(ii) the interests of the enterprise's shareholders and investors have been or could be prejudiced; or

"(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

"(C) such violation, practice, or breach–

"(i) involves personal dishonesty on the part of such party; or

"(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such enterprise or business institution,

the Director may serve upon such party a written notice of the Director's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any enterprise.

"(2) SPECIFIC VIOLATIONS.–

"(A) IN GENERAL.– Whenever the Director determines

that—

"(i) an institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of Title 31 and such violation was not inadvertent or unintentional; or

"(ii) an officer or director of an enterprise has knowledge that an institution-affiliated party of the enterprise has violated any such provision or any provision of law referred to in subsection (c)(1)(A)(ii) of this section,

the Director may serve upon such party, officer, or director a written notice of the Director's intention to remove such party from office.

"(B) FACTORS TO BE CONSIDERED.— In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the Director shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

"(3) SUSPENSION ORDER.—

"(A) SUSPENSION OR PROHIBITION AUTHORIZED.— If the Director serves written notice under paragraph (1) or (2) to any institution-affiliated party of the Director's intention to issue an order under such paragraph, the Director may suspend such party

from office or prohibit such party from further participation in any manner in the conduct of the affairs of the enterprise, if the Director—

"(i) determines that such action is necessary for the protection of the enterprise or the interests of the enterprise's shareholders and investors; and

"(ii) serves such party with written notice of the suspension order.

"(B) EFFECTIVE PERIOD.— Any suspension order issued under subparagraph (A)—

"(i) shall become effective upon service; and

"(ii) unless a court issues a stay of such order under subsection (b) of this section, shall remain in effect and enforceable until—

"(I) the date the Director dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

"(II) the effective date of an order issued by the Director to such party under paragraph (1) or (2).

"(C) COPY OF ORDER.— If the Director issues a suspension order under subparagraph (A) to any institution-affiliated party, the Director shall serve a copy of such order on any enterprise with

which such party is associated at the time such order is issued.

"(4) A notice of intention to remove an institution-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an enterprise, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Director at the request of (A) such party, and for good cause shown, or (B) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the enterprise, as the Director may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such enterprise and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or

set aside by action of the Director or a reviewing court.

"(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" within the term "institution-affiliated party" as used in this subsection means an employee or officer with management functions, and the term "director" within the term "institution-affiliated party" as used in this subsection includes an advisory or honorary director, a trustee of an enterprise under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

"(6) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.– Any person subject to an order issued under this subsection shall not–

"(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

"(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

"(C) violate any voting agreement previously approved by the Office; or

"(D) vote for a director, or serve or act as an institution-affiliated party.

"(7) INDUSTRYWIDE PROHIBITION.–

"(A) IN GENERAL.– Except as provided in subparagraph

(B), any person who, pursuant to an order issued under this subsection or subsection (c) of this section, has been removed or suspended from office in an enterprise or prohibited from participating in the conduct of the affairs of an enterprise may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of–

"(i) any enterprise;

"(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4) of section 8 of the Federal Deposit Insurance Act, or as a savings association under subsection (b)(9) of section 8 of the Federal Deposit Insurance Act;

"(iii) any insured credit union under the Federal Credit Union Act (12 U.S.C. 1781 et seq.);

"(iv) any institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);

"(v) any appropriate Federal depository institution regulatory agency; and

"(vi) the Office or any Enterprise.

"(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.– If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-

affiliated party or prohibits such party from participating in the conduct of the affairs of an enterprise, such party receives the written consent of–

"(i) the Director; and,

"(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to the Director and publicly disclose such consent.

"(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.– Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

"(D) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.– For purposes of this section, the term "appropriate Federal financial institutions regulatory agency" means–

"(i) the appropriate Federal banking agency, in the case of an insured depository institution;

"(ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971 (12 U.S.C.A. § 2001 et seq.);

"(iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C.A. § 1752(7));

"(iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Board and any Federal home loan bank; and

"(E) CONSULTATION BETWEEN AGENCIES.— The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

"(F) APPLICABILITY.— This paragraph shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business enterprise.

"(b) STAY OF SUSPENSION AND/OR PROHIBITION OF INSTITUTION-AFFILIATED PARTY.— Within ten days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an enterprise, such party may apply

to the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under subsection (a)(1) or (a)(2) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

"(c) SUSPENSION OR REMOVAL OF INSTITUTION-AFFILIATED PARTY CHARGED WITH FELONY.—

"(1) SUSPENSION OR PROHIBITION.—

"(A) IN GENERAL.— Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

"(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

"(ii) a criminal violation of section 1956, 1957, or 1960 of Title 18 or section 5322 or 5324 of Title 31,

the Director may, if continued service or participation by such party may pose a threat to the interests of the enterprise's shareholders or investors or may threaten to impair public confidence in the enterprise, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the enterprise.

“(B) PROVISIONS APPLICABLE TO NOTICE.—

“(i) COPY.— A copy of any notice under subparagraph (A) shall also be served upon the enterprise.

“(ii) EFFECTIVE PERIOD.— A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Director.

“(C) REMOVAL OR PROHIBITION.—

“(i) IN GENERAL.— If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the interests of the enterprise's shareholders or investors or may threaten to impair public confidence in the enterprise, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise without the prior written consent of the Director.

"(ii) REQUIRED FOR CERTAIN OFFENSES.— In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the Director shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise without the prior written consent of the Director.

"(D) PROVISIONS APPLICABLE TO ORDER.—

"(i) COPY.— A copy of any order under subparagraph (C) shall also be served upon the enterprise, whereupon the institution-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such enterprise.

"(ii) EFFECT OF ACQUITTAL.— A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in enterprise affairs, pursuant to paragraph (1), (2), or (3) of subsection (a) of this section.

"(iii) EFFECTIVE PERIOD.— Any notice of

suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the Director.

"(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of an enterprise less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of an enterprise are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

"(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution- affiliated party concerned may request in writing an opportunity to appear before the Director to show that the continued service to or participation in the conduct of the affairs of the enterprise by such party does not, or is not likely to, pose a threat to the interests of the

enterprise's shareholders and investors or threaten to impair public confidence in the enterprise. Upon receipt of any such request, the Director shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, the Director or designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument. Within sixty days of such hearing, the Director shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the enterprise will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director's decision, if adverse to such party. The Director is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

"(d) HEARINGS AND JUDICIAL REVIEW.—

"(1) Any hearing provided for in this section (other than the hearing provided for in subsection (c)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the enterprise is located unless the party afforded the hearing consents to

another place, and shall be conducted in accordance with the provisions of chapter 5 of Title 5. After such hearing, and within ninety days after the Director has notified the parties that the case has been submitted for final decision, the Director shall render a decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (d) of this section. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as the Director shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

"(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the enterprise or the institution-affiliated party concerned, or an order issued under paragraph (1) of subsection (c) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the enterprise is located, or in the United States Court of Appeals for the District of

Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of Title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of Title 28.

"(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.".

SEC. 102. FUNDING –

(a) Section 1316(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4516) is amended to read:

"(a) ANNUAL ASSESSMENTS- The Director may establish and collect from the enterprises annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and

expenses of the Office, including the expenses of any examinations under section 1317. The initial annual assessment shall include any startup costs of the Office and any anticipated costs and expenses of the Office for the following fiscal year. Notwithstanding any other provision of law, the amounts received by the Director from any assessments under this section shall not be subject to apportionment for the purposes of Chapter 15 of Title 31 or under any other authority."

(b) Section 1316(g)(3) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4516) is hereby repealed.

SEC. 103. CLARIFICATION OF DUTIES AND AUTHORITIES.

(a) Section 1313(b) of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4513) is amended by:

(1) striking paragraph (1) and replacing with the following:

"(1) the issuance of such regulations and orders as are deemed to be necessary to carry out this part, subtitle B, and subtitle C (including the establishment of capital standards pursuant to subtitle B) , other matters related to safety and soundness, and other applicable laws;

(2) by redesignating paragraphs (10) and (11) as paragraphs (12) and (13) respectively and inserting the following:

"(10) exercise of the authority for the office to act in its own name and through its own attorneys in enforcing any provision of

this title, regulations thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Office is a party;

(11) the exercise of such incidental powers as may be necessary or appropriate to fulfill its duties and authorities set forth in subsection (a) and subsection (b) of this section in the regulation of the nation's housing finance system."

(b) Section 1319B (b) is amended to delete the language from "the requests" through "General for" and replace with "any".

(c) Section 1319G of the Housing and Community Development Act of 1992 (12 U.S.C. 4526) is amended –

(1) in subsection (a), by striking the first sentence thereof and inserting the following new sentence:

"The Director shall issue any regulations and orders necessary to carry out the duties of the Director and to carry out this title and the responsibilities of the Director under the Federal National Mortgage Association Charter Act, and the Federal Home Loan Mortgage Corporation Act, and to ensure that the purposes of this title and such Acts are accomplished."

(d) EXEMPTIONS.– The office shall be exempt from the Federal Advisory Committee Act (Pub. L. 92-463, as amended).

Attachment 3

Testimony of the Honorable Armando Falcon, Jr.
Director, Office of Federal Housing Enterprise Oversight

before the Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises

March 22, 2000

On March 22, 2000, Armando Falcon, the Director of OFHEO, provided the following testimony before the Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises.

H.R. 3703 takes a two-track approach at improving the regulation of government sponsored enterprises (GSEs). One track is consolidating the regulation of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks into a new independent agency. The other track makes a number of amendments to the GSEs' charters addressing safety, soundness and systemic risk issues.

Mr. Chairman, while the current system is working well, that doesn't mean it can't be improved. Consolidation of the safety and soundness regulation of the housing GSEs could lead to even stronger oversight, if done right. However, the consolidation of mission regulation with safety and soundness regulation is not essential for OFHEO or its successor to properly fulfill its safety and soundness responsibility. Any need OFHEO may have to be aware of developments in mission regulation is satisfied through the open lines of communication that exist between OFHEO and HUD. For example, OFHEO was fully consulted on the development of HUD's affordable housing rule regarding the safety and soundness implication of the new goals.

Nor has mission regulation suffered. Secretary Cuomo and Assistant Secretary Apgar have demonstrated their strong commitment to fulfilling HUD's mission oversight responsibility.

I have several general comments to make on H.R. 3703. In addition, as the bill moves forward in the process, I will be happy to provide the Subcommittee with whatever technical assistance it needs.

Strong and Independent Safety and Soundness Oversight

The structure and authorities of the regulator created under H.R. 3703 would maintain and, in some ways, even improve the existing strong and independent regulatory framework for safety and soundness oversight of Fannie Mae and Freddie Mac. This is ever more important, given the continued rapid growth of the Enterprises.

I am fully supportive of increasing the transparency of the Enterprises' operations to the public. Enhanced disclosure can serve to increase the efficiency of the secondary mortgage market. In addition, disclosure about the Enterprises' activities and risk exposures can also

help to strengthen the opportunity of the market to better evaluate and price the Enterprises' securities.

OFHEO already contributes to this process by disclosing the results and conclusions of our comprehensive risk-based examinations and periodic updates provided to Congress and the public on key matters. And while I recognize the need to protect proprietary Enterprise data from public disclosure, OFHEO will be looking for additional ways to increase the public's understanding of the Enterprises' activities and risk exposures.

Consistent with this approach, the bill would require the regulator to obtain annual credit ratings for the Enterprises from nationally recognized statistical rating organizations. OFHEO exercised its existing authority to obtain such a rating in 1996. With adequate funding, regular updates of this type would provide more information to investors about the Enterprises' financial condition and would provide an additional source of information about the Enterprises' financial condition to the regulator.

The bill also reflects prudent public policy by providing for the appointment of a receiver for a GSE under certain circumstances, which is an important option for a regulator and one that does not exist in current law. Under some dire circumstances, receivership may be the most cost-effective and efficient resolution of an Enterprise's problems. Furthermore, the absence of such provisions serves to weaken market discipline by reinforcing the market's conviction that Enterprise securities are implicitly guaranteed by the government.

Finally, I am fully supportive of a transparent regulator. The regulator should report on all of its actions to Congress and to the public, and should be held accountable for its actions. Having comprehensive reporting requirements provides a means for Congress to have effective oversight of the regulator's activities. It also provides meaningful discipline to the regulator in the execution of its oversight responsibilities.

Now I would like to address the regulatory structure contained in the bill.

Board Structure

The bill consolidates the current safety and soundness and mission regulatory responsibilities of OFHEO, HUD, and the Federal Housing

Finance Board into a new, independent agency. The new agency will be managed by a five-member Board comprised of a Chairman, two full-time Directors, and the Secretaries of Treasury and HUD.

Mr. Chairman, I believe that a single agency head is preferable to a Board. It is not unprecedented for independent agencies to be headed by a single individual. There are many examples of this structure, including the National Aeronautics and Space Administration (NASA) and the Environmental Protection Agency (EPA). This structure has proven to be effective and efficient.

First, a single agency head focuses accountability on one individual, rather than diffusing accountability among numerous Board members. Second, a single agency head unifies day-to-day management of the agency in one person, which avoids the confusion, dissension, and gridlock often associated with Boards. Also, a single agency head allows the agency to move nimbly in reacting to the risks of the companies it regulates.

Transition and Effective Date

Whatever Congress decides on the final structure of the new agency, I know you will agree that the bill should do everything possible to ensure success of the new agency.

To that end, I strongly believe that the bill's transition period needs amending. First, the 9-month period is far too short. Also, under the bill, until at least two members of the new Board are confirmed, authority is vested jointly in Treasury and HUD. This seems inconsistent with the intent of providing further independence.

I recommend that the bill include a longer, more practical transition period. During this transition period, the duties and functions of the existing agencies would be combined into one agency, allowing the integration of the agencies before the new agency assumes responsibility. This is especially crucial if the new agency is set up under a Board structure, because it would allow the new Board to inherit a fully integrated agency, rather than having to grapple with integration while also learning how to work together.

A longer transition period will also allow OFHEO and the Federal Housing Finance Board to conclude the major regulations which are already in process.

Finally, this longer transition would accommodate a more orderly merging of the technological and regulatory infrastructures of the three current agencies.

Agency Funding

Mr. Chairman, as you know, we share a view that safety and soundness regulators need to be free of the uncertainty of the annual appropriations process and have the flexibility to set resources in response to any rapid changes in the GSEs or the market. That is why I wholeheartedly and enthusiastically support the bill's funding mechanism.

I feel very strongly that the current situation of subjecting OFHEO to the appropriations process is bad public policy. That is why I have asked Congress to remove OFHEO from the annual process. This would put us on par with other safety and soundness regulators such as the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Federal Reserve Board and the National Credit Union Administration.

I want to be clear that this change would in no way remove OFHEO from appropriate congressional oversight. OFHEO would continue to be subject to the oversight of this Committee and would still have to meet all annual statutory reporting requirements. Removing OFHEO would simply provide me with the flexibility I need to respond quickly to changing conditions, especially a deteriorating one, of the Enterprises or the market.

I want to thank you for your support of our previous budget requests. I also want to thank you for taking the lead on the appropriations issue. I hope that our combined efforts will achieve this goal this session.

Conclusion

Mr. Chairman, I want to thank you again for the opportunity to testify this morning. As I stated in my testimony, the current regulatory system is working well, but that does not mean that improvements can't be made. I am committed to working with Congress to ensure that the system for regulating the GSEs is as strong as possible.

Attachment 4

Testimony of the Honorable Armando Falcon, Jr.
Director, Office of Federal Housing Enterprise Oversight

before the the House Budget Committee
Task Force on Housing and Infrastructure

July 25, 2000

On July 25, 2000, Armando Falcon, the Director of OFHEO, provided the following testimony before the House Budget Committee Task Force on Housing and Infrastructure

Thank you Chairman Sununu, Ranking Member Bentsen, and Members of the Task Force. As you are aware, the Office of Federal Housing Enterprise Oversight (OFHEO) was established in 1992 as an independent entity within the Department of Housing and Urban Development. OFHEO's primary mission is to ensure the capital adequacy and safety and soundness of two government-sponsored enterprises (GSEs) – Fannie Mae and Freddie Mac. To fulfill this mission, OFHEO has regulatory authority similar to other Federal financial regulators such as the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board. Those authorities include annual examinations, broad rulemaking authority, setting capital standards, enforcement actions, and research.

The Task Force has taken an important step in convening this hearing to consider the economic implications of the size and scope of the housing GSEs activities. Because Assistant Secretary Apgar is here today representing the Federal Housing Finance Board, I will focus my discussion on the two entities within my jurisdiction.

In considering these issues, it is important to understand what the GSEs do and how they operate.

WHO ARE FANNIE MAE AND FREDDIE MAC?

Fannie Mae and Freddie Mac are publicly-held companies chartered by Congress. They were established to create a secondary mortgage market to ensure a ready supply of mortgage funds for affordable housing for American homebuyers. They fulfill this very important public mission by buying mortgages from commercial banks, thrift institutions, mortgage banks, and other primary lenders, and either hold these mortgages in their own portfolios or package them into mortgage-backed securities (MBS) for resale to investors. They have become two of the world's largest financial institutions.

To assist Fannie Mae and Freddie Mac in achieving their public mission, they receive numerous explicit benefits from the Federal Government, including an exemption from state and local taxation, an exemption from the registration requirements of the Securities and Exchange Commission, and each firm has a potential credit line with the

U.S. Treasury.

However, the most important benefit the Enterprises receive as a result of their GSE status is the special treatment the market bestows on their securities. Because of investors' belief in an implied U.S. government guarantee on their securities, the Enterprises have been able to borrow money more cheaply and without the practical volume restrictions faced by any fully-private triple-A rated company. This market perception allows the Enterprises to safely operate with a higher degree of leverage than fully private firms are able to do.

There is no doubt that the GSEs are large and rapidly growing. As they grow, the implications to the economy if they were to fail also increases. However, the actual likelihood of any failure depends critically on how they are managed and supervised. I want to assure you that both Fannie Mae and Freddie Mac are currently in excellent financial condition, are well-managed, and have exceeded minimum capital requirements every quarter that the requirement has been in place. And OFHEO has a strong regulatory program in place to ensure their continued safe and sound operation. If the need ever arose, OFHEO would move quickly and forcefully to correct any financial problems at the Enterprises.

OFHEO supervises the Enterprises primarily through its extensive, and continuous, examination work. Our examiners possess impressive skills and backgrounds, and came to OFHEO from banking and thrift regulatory bodies and from the mortgage industry itself. Our experts maintain a physical presence at the Enterprises at all times, and have unlimited access to all levels of management and to highly-sensitive corporate records. By staying apprised of the Enterprises' risks and business activities on an almost real-time basis, the examiners are able to evaluate an extensive array of risk-related factors and to assess the Enterprises' financial safety and soundness.

Each quarter, the OFHEO examination staff issue conclusions relating to more than 150 separate components of financial safety and soundness, and thereby provide me with a comprehensive picture of the Enterprises' financial condition. These conclusions pertain to such key risk management areas as credit risk, interest rate risk, liquidity risk, information technology, internal controls, business process controls, internal and external audit, management information and process, and board of director governance and activities.

Examiners meet frequently with management to discuss and assess

business strategies and plans, financial performance results, risk management structure and practices, and each Enterprise's overall risk profile. These discussions include future trends and management's controls and practices to anticipate and prepare for potentially adverse trends in any risk areas, or combination of risk areas.

Examination teams identify opportunities for improvements in existing Enterprise risk management practices and work directly with management to address identified opportunities to enhance financial safety and soundness. Through our risk-focused examination framework, OFHEO constantly evaluates such critical areas as:

- The Enterprises' overall risk management practices
- The composition, risk profile, and significant trends in the Enterprises' retained, and guaranteed, mortgage portfolios
- The Enterprises' ability to effectively manage interest rate risk and other key financial exposures
- The Enterprises' ability to efficiently issue debt and hedge financial exposures
- The quality of financial performance-related information and market-related information on which the Enterprises' boards and management rely in reaching key decisions

In summary, the examination group provides us with an accurate and timely understanding of the Enterprises' financial condition.

WHAT DO THE ENTERPRISES DO?

Fannie Mae and Freddie Mac have two major lines of business. First, they guarantee mortgage-backed securities: securities backed by pools of residential mortgages. When investors purchase a mortgage-backed security they are entitled to the principal and interest payments made by the mortgage borrower, except for portions earned by mortgage servicers and by the Enterprise which guarantee the payment of principal and interest. In return for the portion the Enterprise earns, they agree to protect investors against losses caused by borrower defaults. Enterprise mortgage-backed securities are highly regarded by investors and can be issued at interest rates very close to a mortgage-backed securities with explicit government guarantees. This guarantee business has been quite profitable for the Enterprises, but mortgage borrowers receive most of the benefit from these lower borrowing costs. While there is no precise way to measure these savings, recent estimates are generally centered around 25 to 30 basis points.

The Enterprises' second major line of business is portfolio investment in mortgage-backed securities and, to a lesser extent, whole mortgages that are purchased directly from lenders and are not parts of pools backing mortgage securities. The Enterprises fund these investments primarily by issuing debt. The characteristics of the debt issues are designed so that, in combination with a variety of derivatives contracts and other hedges entered into by the Enterprises, the values of the debt and the mortgage securities will be similarly affected by interest rate changes. This help protect the Enterprises from a mismatch between the cost of funding its operations and the income derived from those operations.

Another risk in the portfolio business is that changes in borrowers' prepayment behavior, often in response to interest rate changes, are not fully predictable and may affect mortgage security values differently than expected.

Portfolio investment has been more profitable than the guarantee business. This activity may create additional interest savings for mortgage borrowers, though such savings would be much smaller than those created by the guarantee business. Because empirical data on this issue is scarce, OFHEO intends further study of this topic.

Both of these business lines have been growing at the Enterprises, particularly their portfolio investment business. Since the end of 1991, the Enterprises' mortgage assets have swelled from $155 billion to $900 billion, an increase of approximately 475 percent. The majority of the increase reflects purchases of mortgage securities they had previously guaranteed. To fund the growth in these assets, the Enterprises have increased their debt outstanding at a comparable rate from $164 billion to $963 billion over the same period.

Their guarantee business has also increased significantly. Total mortgage-backed securities guaranteed – both those held privately as well as those held in portfolio – has more than doubled from $731 billion in 1991 to over $1.76 trillion today. Although the Enterprises purchased roughly half of the increase in their guaranteed mortgage securities in recent years, the amounts held by other investors has still grown 73 percent to $1.2 trillion over that period.

The Enterprises debt and mortgage-backed securities outstanding now amounts to $2.2 trillion. Adding in the debt of the other GSEs, the

total debt of all GSEs rises to $3 trillion, substantially above the total privately held, marketable debt of the U.S. Treasury. (Further detail about Enterprise mortgage portfolios, debt, and mortgage-backed securities outstanding can be found in the attached tables.)

WHO HOLDS THE DEBT?

Federal Reserve estimates for holdings of what is known as agency debt, about 85 percent of which is issued or guaranteed by GSEs, shows the following breakdown:

Depository Institutions	27%
Households, Mutual Fund, Trusts & Estates	21%
Public & Private Retirement Funds	16%
Foreign Investors (including 60+ central banks)	12%
Insurance Firms	9%
State & Local Governments	5%
Others	10%

As should be apparent from these data, a financial crisis at the Enterprises could have a disruptive impact on investors and the economy. OFHEO has developed and continues to improve upon a strong supervisory program.

The Enterprises' business lines will likely continue to grow. Recently Fannie Mae announced its continued desire to double earnings per share over the next five years. Freddie Mac has predicted double digit earnings growth over a similar period. These earnings targets will only lead to increased pressure to generate new revenues. The prudence and competence with which the Enterprises manage and balance their assets and liabilities becomes that much more important, the larger they grow.

In order for the Enterprises to continue to grow their asset portfolios, they have expanded the markets for their debt securities, and built demand for debt instruments, such as callable debt, that help them manage interest rate risk. They have expanded their domestic and

international investor base, developing new products to appeal to different investor profiles. The introduction of debt issuance programs modeled after those of the U.S. Treasury is the most recent development in these efforts.

WHAT IS OFHEO'S ROLE?

OFHEO is aggressively fulfilling its obligation as a strong and effective regulator. By fulfilling our core mission well, OFHEO protects against systemic risks posed by Fannie Mae and Freddie Mac. As I have stated before, OFHEO takes a three-pronged approach to accomplish this goal – examinations, capital regulation, and research.

I have already spoken about our strong examination program, so I will next address our capital standards. OFHEO's minimum capital standard, one that is built on traditional, ratio-based approaches to regulation of insured depository institutions, ensures a base level of Enterprise capital to protect against risk. Since our inception, we have imposed and enforced a minimum capital standard on the Enterprises. The Enterprises have met that standard every quarter and we are reviewing the necessity of updating the standard.

We are on track to complete our long-awaited Risk-Based Capital Standard by the end of the year. This standard will be the first to explicitly link capital and risk through use of a model that simulates the financial performance of the Enterprises under stress. This is my top priority and we will meet my deadline.

Finally, OFHEO is continuing to strengthen its research and analytical capability. We must stay on top of the changes taking place in the quickly evolving secondary and primary mortgage markets. This important research and analysis serves to better inform our examination and capital regulation efforts. In summary, the Enterprises' rapid growth raises important policy issues regarding their mission and the systemic risks they pose. However, because OFHEO is aggressively fulfilling its responsibilities, this discussion takes place not in a climate of urgency, but at a time when the Enterprises are financially sound and well regulated.

Attachment 5

Data Tables

Table 1	Combined Fannie Mae and Freddie Mac Mortgage Assets, Debt, and MBS
Table 2	Fannie Mae and Freddie Mac Select Financial Data
Table 3	Debt Outstanding
Table 4	Effective Debt Outstanding
Table 5	Enterprise MBS Outstanding
Table 6	Enterprise MBS Issuances
Table 7	Combined Fannie Mae and Freddie Mac Retained Portfolios
Table 8	Enterprise Retained Portfolio Composition
Table 9	Combined Fannie Mae and Freddie Mac Purchases
Table 10	Combined Fannie Mae and Freddie Mac Financial Derivatives
Table 11	Combined Fannie Mae and Freddie Mac Capital Summary
Table 12	Combined Fannie Mae and Freddie Mac Earnings Components